[NOT REPORTED]

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 700 OF 2001.

1. Ramrao Dagdu Mane,]
   Age 30 yrs, Occ. Service.] Appellants.
2. Parvatibai Ramrao Mane] (original
   Both r/o. Phalavan,] Accused)
   Tal.Malshiras, Dist.Solapur]
   No.1 At present in Yeroda]
   Central Prison, Yeroda, Pune]

versus.

The State of Maharashtra] Respondent.

Mr.T.E.Mane for the appellants.

Mr.A.M.Shringarpure, APP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 15th July 2004.

ORAL ORDER

1. This is an appeal filed by the accused against their conviction. Both the accused were

acquitted under Section 498A r/w 34 of the Indian Penal Code, so also under Section 494 of the Indian Penal Code. Both these accused have been convicted under Section 306 r/w 34 of the Indian Penal Code. Accused No.1 is sentenced to suffer R.I. for seven years and to pay a fine of Rs.1000/- in default, R.I. for nine months. Accused No.2 is sentenced to suffer S.I. for two years and to pay fine a fine of Rs.500/- in default, S.I. for four months.

2. The prosecution case, in short, was that Smt.Vandana Mane was the victim in this case. She was the wife of accused No.1. Accused No.2 is the first wife of accused No.1. Vandana died due to burning. Her father Laxman filed a report against the accused. As per the report, the accused No.1 was working as a watchman of the canal. He was residing alone. Laxman wanted his daughter Vandana to be married to accused No.1. On inquiry accused No.1 told him that he had earlier married with one Parvatibai but has given divorced to her. Therefore, Vandana was married to accused No.1 before 1 1/2 and 2 years of the incident i.e. before her death. 5-6 months before the incident, first wife Parvatibai came

to reside with accused No.1 with her children. Thereafter both accused Nos. 1 and 2 started ill-treating and beating Vandana. In the meanwhile Vandana became pregnant from accused No.1 and both the accused caused her abortion by giving some medicine. Vandana was narrated all her sufferings to her father. Accused wanted Vandana to undergo family planning operation as he did not want more children. Vandana refused to do so. Therefore, her ill-treatment was continued. Laxman - the father of Vandana took help of three mediator Narayan, Tukaram and Baliram to prevail upon the accused not to ill-treat her daughter. But on 9.11.1993 he learnt that Vandana was found dead and burnt at the house of the accused. On this information, an offence came to be registered against the accused; Panchanama was prepared; matter was investigated; Post-mortem was carried out and the accused came to be tried for the aforesaid offences and as well as bigamy and under Section 498A. The trial Court acquitted the accused under Section 498A and also of bigamy i.e. accused No.1 in that regard but convicted them as stated above and hence this appeal.

3. Counsel for the accused firstly contended that if at all according to Laxman - the father of deceased Vandana, accused No.1 had represented that he had married earlier with one Parvati and had obtained a divorce from her, then it was obligatory upon the prosecution to prove that Vandana was legally wedded wife of accused No.1. That aspect of the matter has been considered by the trial Court at length. The trial Court came to the conclusion that accused No.1 could not be held guilty of bigamy i.e. his marriage with Vandana while his first marriage with Parvati was subsisting. Acquittal of the accused under Section 494 of the Indian Penal Code does not give him any benefit so far as offences under Sections 498A and 306 are concerned. Vandana was married to accused No.1. She was living with him. They were being treated and regarded as husband and wife. It is true that in his statement under Section 313 of the Cr.P.C. accused No.1 has denied that Vandana was married with him. But there is no explanation why an unmarried girl started living with accused No.1. Nothing is stated by the accused in this regard though this fact is within personal knowledge of accused No.1. There is no defence that Vandana

was keep, mistress or concubine of accused No.1. No where in his statement under Section 313 or during the cross examination of the witnesses any such defence is taken. Laxman (PW.1) - the father of Vandana is cross examined at length. Suggestions were put to him to the effect that Vandana was not married to accused No.1. Apart from this, there is nothing on record to show or nor any explanation was given by accused No.1 as to what was his relationship with Vandana and why she was staying with him as a wife. The finding of the trial Court regarding accused No.1 entered into second marriage while his first marriage was subsisting, though correct, cannot help accused No.1 while he is facing charge of offences under Sections 498A and 306 of the Indian Penal Code. Evidence of Vandana's father Laxman and her brother Sugriv (PW2) is sufficient to come to the conclusion that Vandana was married to accused No.1 and after her marriage she was living with him for about ten years. The factum of marriage is also supported by four coloured photographs of Vandana and accused No.1 taken at the time of their marriage as per Panchanama (Exhibit 15).

4. Second crucial question is about the

death of Vandana and there is no dispute that Vandana committed suicide. This aspect of the matter is also properly considered by the trial Court. No defence is raised by the accused that Vandana was died due to accidental death. It is not the case of the accused or the prosecution that she was murdered. She died because of 100% burn injuries; she died in the house of the accused. Panchanama of scene of offence reveals that she died in the second room of the house of accused which is admeasuring 10 x 8 ft. where household articles were kept. There was kerosene can with little kerosene in it; match box was lying there; she died during night; a lantern, which is called in Marathi as Panti, was also found. Inquest panchanama supports the percentage of burns or existence of percentage and as rightly held by the trial Court within a very short distance from the house of the accused where the dead body of Vandana was found i.e. within 5 ft. distance there was a canal and water was flowing there through. If it was a case of accident and Vandana got fire at night, then attempts to save her ought to have been there. In the absence of such defence coming from the accused, the trial Court has rightly

concluded that Vandana committed suicide.

5. Third aspect of the matter is about ill-treatment to Vandana and abetment of suicide. In that regard, the trial Court relied upon the evidence of Laxman (PW.1) and Sugriv (PW.2) and also upon the FIR lodged by Laxman. Evidence of these two witnesses was fully inspiring confidence.

. It was tried to be contended by the advocate for the accused that P.W.1 and P.W.2 are the only witnesses for the prosecution and they are related to Vandana and looking to the span of so called marital life of ten years, there are no grounds or reasons for Vandana to cause abetment. This argument was also advanced before the trial Court. But same came to be rejected because the evidence of P.W.Nos. 1 and 2 is consistent; corroborates each other and specific instances of ill-treatment have been given by these two witnesses.

5. According to both these witnesses (PW Nos.1 and 2) everything went on smoothly till accused No.2 came to reside with accused No.1.

Accused No.2 was the first wife of accused No.1 and in that regard accused No.1 had made false representation to the father of Vandana before his marriage that he had obtained divorce from his first wife i.e. accused No.2 Parvati. According to P.W.Nos. 1 and 2 there was no problem between Vandana and accused No.1 before Parvati (Accused No.2) came to reside with accused No.1 and, after her arrival ill-treatment to Vandana was started. At that time Vandana was pregnant. But accused Nos. 1 and 2 insisted for abortion. Vandana refused to concede their request and thereafter she was ill-treated and severely beaten. She was also told that both of them, i.e. accused Nos.1 and 2, had two children and they do not want any more issue. Vandana narrated all this to her parents and P.W.1 Laxman sought intervention of Tukaram, Baliram and Narayan to stop the ill-treatment. But in spite of this pursuation, ill-treatment was not stopped. In his report, Laxman has stated that Vandana committed suicide because she was fade up by the ill-treatment meted out by the accused Nos. 1 and 2 to compel her not to have any issue and to undergo family planning operation. P.W.2 has given similar evidence. He has also stated

that Vandana was forced to undergo for abortion at the instance of accused Nos. 1 and 2.

6. Counsel for the accused contended that evidence of these witnesses is vague; they have not given any particulars about the date of their disclosure and; the persons, who acted as interveners, have not been examined by the prosecution. That aspect of the matter was also considered by the trial Court and it was held that witnesses are villagers and it cannot be expect from them that they should give evidence with all these technical details or with reference to the dates and events.

7. It was also contended by the advocate for the accused that there was a delay in lodging the FIR. But I do not find any material to accept this contention. P.W.1 Laxman has stated in his evidence that he received message of Vandana's death that she committed suicide; next day he went to Phalvani Chowky i.e. the house of accused and saw her body; then Vandana's body was shifted to the hospital for autopsy and then on that day itself he lodged the report. It will be therefore clear that within an hour of knowing

about unnatural death of Vandana the FIR was lodged by her father Laxman. There is absolutely no delay in lodging the FIR. This is, therefore, a case where the prosecution has fully succeeded in proving the offences against the accused. The trial Court has rightly came to the conclusion about the guilt of the accused. No interference is called for. Hence the following order :-

:ORDER:

1. This appeal is dismissed.

2. Accused No.1 is in jail. Accused No.2 is on bail. She should surrender within six weeks from today. Thereafter her bail bond shall stand cancelled.

15/07/2004 [D.G.DESHPANDE]
JUDGE.

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